

CAPTION: Docket No. 2008-0677-EAQ-E. Consideration of an Agreed Order assessing administrative penalties against Kamary Development, Ltd. in Bexar County; RN105379333; for Edwards Aquifer violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Lauren Smitherman, Bryan Sinclair)

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0677-EAQ-E TCEQ ID: RN105379333 CASE NO.: 35778
RESPONDENT NAME: Kamary Development, Ltd.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER

SITE WHERE VIOLATION(S) OCCURRED: Kamary Commons Mixed Use Development, located approximately 1,700 feet from the intersection of Loop 1604 and Bandera Road, Bexar County

TYPE OF OPERATION: Mixed use development property

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on September 8, 2008. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Lauren Smitherman, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-5223; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Adolfo E. Gutierrez, Partner, Kamary Development, Ltd., 811 East Calton Road, Laredo, Texas 78041
 Mr. Rudy Gonzalez, President, Kamary Development, Ltd., 811 East Calton Road, Laredo, Texas 78041
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 11, 2008</p> <p>Date of NOE Relating to this Case: April 7, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed clearing and mulching of vegetation on a combined area of approximately 10 acres [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$14,625</p> <p>Total Deferred: \$2,925 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$11,700</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on February 19, 2008, the Respondent received approval of a WPAP for the Site.</p>

Additional ID No(s): 13-07120301



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

TCEQ

DATES

Assigned

14-Apr-2008

PCW

23-Apr-2008

Screening

23-Apr-2008

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Kamary Development, Ltd.

Reg. Ent. Ref. No. RN105379333

Facility/Site Region 13-San Antonio

Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No. 35778

Docket No. 2008-0677-EAQ-E

Media Program(s) Edwards Aquifer

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Lauren Smitherman

EC's Team Enforcement Team 1

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$39,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, & 7

\$0

Notes

No enhancement is recommended due to average performer classification.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

25% Reduction

Subtotal 5

\$9,750

Before NOV

NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent came into compliance on February 19, 2008.

0% Enhancement*

Subtotal 6

\$0

Total EB Amounts \$21

Approx. Cost of Compliance \$4,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

\$29,250

OTHER FACTORS AS JUSTICE MAY REQUIRE

-50%

Adjustment

-\$14,625

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Reduction in penalty for immediately halting construction upon engineer's request.

Final Penalty Amount

\$14,625

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$14,625

DEFERRAL

20%

Reduction

Adjustment

-\$2,925

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$11,700

Screening Date 23-Apr-2008**Docket No.** 2008-0677-EAQ-E**PCW****Respondent** Kamary Development, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 35778

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN105379333**Media [Statute]** Edwards Aquifer**Enf. Coordinator** Lauren Smitherman**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%>> **Compliance History Summary****Compliance History Notes**

No enhancement is recommended due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 23-Apr-2008 Respondent Kamary Development, Ltd. Case ID No. 35778 Reg. Ent. Reference No. RN105379333 Media [Statute] Edwards Aquifer Enf. Coordinator Lauren Smitherman Violation Number <input type="text" value="1"/> Rule Cite(s) <input type="text" value="30 Tex. Admin. Code § 213.4(a)(1)"/> Violation Description <input 10="" 11,="" 2008.="" a="" acres."="" activity="" an="" and="" approximately="" aquifer="" area="" as="" beginning="" clearing="" combined="" conducted="" documented="" during="" edwards="" investigation="" investigator="" january="" mulching="" observed="" of="" on="" over="" prior="" recharge="" regulated="" specifically,="" the="" to="" type="text" value="Failed to obtain approval of a Water Pollution Abatement Plan (" vegetation="" wpap")="" zone,=""/>	Docket No. 2008-0677-EAQ-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision March 8, 2008</i>																	
Base Penalty <input type="text" value="\$10,000"/>																		
>> Environmental, Property and Human Health Matrix																		
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%;">Release</th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Harm Moderate</th> <th style="width: 20%;">Minor</th> <th style="width: 10%;"></th> </tr> </thead> <tbody> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"> Percent <input type="text" value="10%"/> </td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> </tr> </tbody> </table>		Release	Major	Harm Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	x
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>> Programmatic Matrix																		
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	Falsification	Major	Moderate	Minor														
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>													
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors."/>																	
Adjustment <input type="text" value="\$9,000"/>																		
<input type="text" value="\$1,000"/>																		
Violation Events																		
<table style="width: 100%;"> <tr> <td style="width: 40%;">Number of Violation Events <input type="text" value="39"/></td> <td style="width: 20%; text-align: center;"><input type="text" value="39"/></td> <td style="width: 40%;">Number of violation days</td> </tr> </table>		Number of Violation Events <input type="text" value="39"/>	<input type="text" value="39"/>	Number of violation days														
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quarterly	<input type="text"/>																	
semiannual	<input type="text"/>																	
annual	<input type="text"/>																	
single event	x																	
Violation Base Penalty <input type="text" value="\$39,000"/>																		
<input type="text" value="Thirty-nine single events are recommended based on the investigation date (January 11, 2008) through the date of compliance (February 19, 2008)."/>																		
Economic Benefit (EB) for this violation																		
Statutory Limit Test																		
Estimated EB Amount <input type="text" value="\$21"/>	Violation Final Penalty Total <input type="text" value="\$14,625"/>																	
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$14,625"/>																		

Economic Benefit Worksheet**Respondent** Kamary Development, Ltd.**Case ID No.** 35778**Reg. Ent. Reference No.** RN105379333**Media** Edwards Aquifer**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$4,000	11-Jan-2008	19-Feb-2008	0.1	\$21	n/a	\$21
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost reflects the amount to prepare and submit a WPAP. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$4,000

TOTAL

\$21

Compliance History

Customer/Respondent/Owner-Operator:	CN603271685	Kamary Development, Ltd.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105379333	KAMARY COMMONS MIXED USE DEVELOPMENT	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01

ID Number(s):	EDWARDS AQUIFER	REGISTRATION	13-07120301
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Location:	1,700 FT FROM THE INTX OF LOOP 1604 AND BANDERA RD, BEXAR CO, TX
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TCEQ Region:	REGION 13 - SAN ANTONIO
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Date Compliance History Prepared:	April 23, 2008
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Agency Decision Requiring Compliance History:	Enforcement
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Compliance Period:	April 23, 2003 to April 23, 2008
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TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name:	<u>Lauren Smitherman</u>	Phone:	<u>512-239-5223</u>
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Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | |
|----|---|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |
| | N/A |
| B. | Any criminal convictions of the state of Texas and the federal government. |
| | N/A |
| C. | Chronic excessive emissions events. |
| | N/A |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) |
| | 1 04/09/2008 (611353) |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) |
| F. | Environmental audits. |
| | N/A |
| G. | Type of environmental management systems (EMSs). |
| | N/A |
| H. | Voluntary on-site compliance assessment dates. |
| | N/A |
| I. | Participation in a voluntary pollution reduction program. |
| | N/A |
| J. | Early compliance. |
| | N/A |

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KAMARY DEVELOPMENT, LTD.
RN105379333**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0677-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kamary Development, Ltd. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns a mixed use development property located approximately 1,700 feet from the intersection of Loop 1604 and Bandera Road in Bexar County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 12, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Fourteen Thousand Six Hundred Twenty-Five Dollars (\$14,625) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Eleven Thousand Seven Hundred Dollars (\$11,700) of the administrative penalty and Two Thousand Nine Hundred Twenty-Five Dollars (\$2,925) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on February 19, 2008, the Respondent received approval of a Water Pollution Abatement Plan ("WPAP") for the Site.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner of the Site, the Respondent is alleged to have failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on January 11, 2008, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1). Specifically, the investigator observed clearing and mulching of vegetation on a combined area of approximately 10 acres.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kamary Development, Ltd., Docket No. 2008-0677-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Joel S. Miller
For the Executive Director

8/21/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

June 30, 2008
Date

Adolfo E. Gutierrez
Name (Printed or typed)
Authorized Representative of
Kamary Development, Ltd.

PARTNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

